

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
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CC:CORP:02  
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Date: August 01, 2011

## LEGEND

Parent =

Sub =

Advisor =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Year =

Year 2 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

k =

l =

m =

n =

o =

p =

q =

r =

s =

t =

u =

v =

w =

x =

Dear \_\_\_\_\_ :

This letter ruling responds to your March 18, 2011 request, submitted by your authorized representative, for a ruling as to the federal income tax consequences of certain transactions. The information provided in that request and in later correspondence is summarized below.

The ruling contained in this letter is based upon the facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the information, representations, and other data submitted may be required as part of the audit process.

#### SUMMARY OF FACTS

Parent is a common parent of an affiliated group of corporations that join in filing a consolidated federal income tax return. Sub is a direct subsidiary of Parent and joins in its consolidated return. Sub currently has two classes of common stock outstanding—Class A and Class B. Sub is also authorized to issue preferred shares but has not issued any such shares.

On Date 1, Parent acquired all of the stock of Sub, which, at the time of acquisition, consisted of a single class of common stock. On Date 2, in preparation for an initial public offering, Sub amended its certificate of incorporation to authorize the issuance of two classes of common stock—Class A and Class B, with Class B carrying proportionately higher voting rights. The Class A shares were to be issued to the public and used to compensate employees; the Class B shares were to be held by Parent to retain voting control of Sub. On Date 3, Class A shares were issued in an initial public offering. Parent has continuously held all of the Class B stock in Sub which is not publicly traded.

As of Date 4, Sub had a shares of Class A stock outstanding, b of which were owned by Parent; the remaining c of Class A shares were owned by the public and employees who have exercised their options or vested in their restricted stock or restricted stock units (“RSUs”) pursuant to Sub’s Equity and Incentive Plan. Also as of Date 4, Sub had d shares of Class B stock outstanding, all of which were owned by Parent.

Sub’s Class A and Class B stock are identical with respect to liquidation rights, dividend right, and consideration for any consolidation or merger of Sub. With respect to voting rights, Class A stock is entitled to one vote per share and Class B stock is entitled to ten

votes per share. The holders of the Class B stock, voting separately as a class, are entitled to elect a number of members of the board of directors equal to the minimum whole number of directors that would constitute at least 80 percent of the total number of directors on the board. The holders of Class A stock and the holders of Class B stock, voting together as a single class, are entitled to elect the remaining number of directors, which in no event can be less than one director.

Holders of the Class A stock are not entitled to convert any share of Class A stock into any other security of Sub or any other property. Holders of the Class B stock, however, are entitled to convert any share of the Class B stock into a share of Class A stock. Upon a transfer by Parent of any share of Class B stock (except for a transfer to an affiliate of Parent), such share automatically converts into a share of Class A stock. Each share of Class B stock will also automatically convert into one share of Class A stock at such time as the outstanding shares of Class B stock owned by Parent represent less than 20 percent of the aggregate number of shares of the then outstanding common stock. Sub will not reissue or resell any shares of Class B stock that are converted into shares of Class A stock or that are acquired by Sub in any other manner.

In order to preserve affiliation with Sub, Parent must reassess its ownership percentage each time an employee of Sub exercises stock options or vests in its RSUs. Parent has the ability to purchase additional Sub shares to retain at least an 80-percent interest in the vote and value of Sub. Parent purchased e shares of additional Sub Class A stock on the market in Year at a cost of \$ f. In addition, in Year Sub repurchased shares on the market. These combined actions have permitted Parent to retain greater than 80 percent of the vote and value of Sub.

On Date 5, Advisor advised Parent that, in valuing the stock of Sub held by Parent, it was appropriate to apply a control premium in the range of g percent to h percent in estimating the value of Parent's stock interest in Sub. According to Advisor, the assessed range was reflective of Parent's majority ownership position and superior voting rights. Applying a median premium of i percent, Advisor estimated that Parent's ownership of k percent of the then outstanding Sub shares represented l percent of the value of Sub as of Date 6. For Year, applying the same estimated control premium of i percent, Parent estimates that its m percent interest on an outstanding shares basis represents n percent of the value of Sub as of Date 4. As of Date 4, Parent had o percent voting control of Sub.

Further, when Sub takes a deduction for the compensatory stock issued pursuant to its Equity and Incentive Plan, it often results in a temporary Excess Loss Account (ELA) in the Sub stock owned by Parent. At the end of Year 2, Parent had a basis in its Sub stock of \$ p. However, in Year, based on preliminary estimates, Sub generated a loss as a result of the employee compensation awards and thus a net negative basis adjustment of \$ q. Due to a significant increase in the price of Sub's Class A stock in

Year, a large number of Sub's employees exercised their options for compensatory stock pursuant to Sub's Equity and Incentive Plan. Consequently, as of Date 4, Parent estimates that it had an ELA in the Class B stock of \$ r (\$ s opening basis, with a negative basis adjustment of \$ t), and a basis in the Class A stock of \$ u (\$ v opening basis, with a negative basis adjustment of \$ w). Thus, Parent estimates that it has an aggregate ELA of \$ x in the shares of Sub that it owned.

### RULING

Based solely on the information submitted and the representations made, we rule as follows: In connection with the investment adjustment required under Treas. Reg. § 1.1502-32 for Parent's Sub stock for its consolidated return year ending Date 4, Parent is permitted to utilize its basis in the Class A Sub shares it purchased in Year pursuant to Treas. Reg. § 1.1502-19(d)(1) to reduce or eliminate its ELA in the previously held Class A and B shares in Sub.

### CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the above described transaction under other provisions of the Code or the regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the above described transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding whether the Class A and the Class B stock of Sub are properly treated as one class of stock for purposes of Treas. Reg. § 1.1502-32(c)(2) or whether Sub remained affiliated with Parent throughout the consolidated return year ending Date 4.

### PROCEDURAL MATTERS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Gerald B. Fleming  
Senior Technician Reviewer, Branch 2  
Office of Associate Chief Counsel (Corporate)